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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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OCT 30 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
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Implementation of the Pay Telephone ) CC Docket No. 96-128  
Reclassification and Compensation Provisions )  
of the Telecommunications Act of 1996 )  
  
To: The Commission

**COMMENTS OF THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
ON PETITIONS FOR WAIVER OF THE  
CODING DIGITS REQUIREMENT**

The Competitive Telecommunications Association ("CompTel"), by its undersigned counsel, respectfully submits the following opposition to the petitions seeking waiver of the requirement that LECs provide unique coding digits to identify payphones eligible for compensation.<sup>1/</sup> CompTel opposes the petitions because it is impractical, inequitable, and contrary to law to subject carriers receiving payphone-originated calls to compensation obligations for payphones that do not transmit the required coding digits.<sup>2/</sup> Further, the Bureau's *Waiver Order*,<sup>3/</sup> which requires precisely that compensation, should be rescinded

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<sup>1/</sup> Public Notice, DA 97-2214 (rel. Oct. 20, 1997).

<sup>2/</sup> CompTel does not oppose waiver of the coding digit requirement for non-equal access areas, however. Although CompTel is not in a position to verify the costs claimed by USTA, the pace of equal access should not be dictated by the needs of payphone compensation. Therefore, CompTel would support a modification of the compensation plan to allow payphones in non-equal access areas to be compensated by other means, such as limited per-phone compensation shared equitably by all compensation payors.

<sup>3/</sup> Order, DA 97-2162 (Com. Car. Bur. Oct. 7, 1997) (*Waiver Order*).

promptly. CompTel could support a limited extension of the coding digit deadline for some phones, but only if the Commission conditions such an extension on the LEC (not carriers receiving payphone calls) paying per-phone compensation to PSPs for phones that do not transmit unique coding digits. Requiring LECs to pay compensation during this period equitably accounts for the circumstances leading to the present non-compliance and gives the entity most able to rectify the problem the incentive to do so as expeditiously as possible.

The Commission clearly articulated the payphone coding digit requirement over a year ago. Responding to an MCI petition for reconsideration asserting that the "restricted line" indicator (ANI digit "07") was insufficient, the Commission clarified that:

to be eligible for [per-call] compensation, payphones will be required to transmit specific payphone coding digits as part of their ANI, which will assist in identifying them to compensation payors. Each payphone must transmit coding digits that specifically identify it as a payphone, and not merely as a restricted line.<sup>4/</sup>

The Commission ordered the LECs to develop such coding digits and to make them available to PSPs "on a tariffed basis."<sup>5/</sup> Carriers owing per-call compensation have spent millions of dollars and countless personnel hours over the past year to modify their call processing, call recording, and rating and billing systems in reliance on the expectation that they will receive coding digits that uniquely identify an ANI as a payphone.

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<sup>4/</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21,233, at ¶ 64 (1996).

<sup>5/</sup> *Id.*

Unique payphone coding digits are essential for three separate purposes.<sup>6/</sup> First, a unique identifier is critical to a carrier's ability to identify a call as payphone-originated during the setup process. Many customers of CompTel's member companies are demanding that their carrier provide them with the ability to reject payphone calls in order to avoid the payphone compensation fee. Such blocking will be possible only if unique coding digits are reserved for payphone calls. Second, many carriers plan to recover the substantial increase in costs through a surcharge on payphone-originated calls. In order to apply the charge with other charges during the same billing cycle as the call is billed, a carrier must know from the call record itself whether the call is payphone-originated. Reliance on after-the-fact processing based on information gained several months later will result in intolerable errors and missed charges. Third, payphone call records must be segregated from other call records and maintained separately in order to pay compensation when due. It is impractical to ask carriers to store and process many millions of unrelated calls because payphone calls cannot be separately identified from the call records.

Barely a week before the deadline for providing these unique payphone coding digits, three LEC entities (collectively, "Petitioners"), USTA, the LEC ANI Coalition and TDS Communications Corporation, separately petitioned for waiver of the coding digit requirement. Each petitioner claims that the LECs it represents will not provide unique coding digits by the October 7, 1997 deadline, and requests waivers extending the requirement for some or all of the phone in their serving territories. The eleventh-hour nature of the requests did not leave the Commission with time to develop a record in response to the petitions. However, the Bureau granted, on its own motion, a waiver

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<sup>6/</sup> Only one of these purposes -- paying compensation -- appears to have been considered in the *Waiver Order*, however.

substantially similar to those requested by Petitioners. Now, after having an opportunity to review the petitions more fully, the Commission should deny the petitions and rescind the *Waiver Order*.

The Petitioners have the burden of showing that there is "good cause" for the waiver.<sup>7/</sup> Yet Petitioners have shown no compelling reason why they could not have complied with the coding digit requirement clearly articulated over one year ago. The Commission provided the LECs with a one year transition period to accomplish the necessary changes, and no petitioner has produced probative evidence why that transition period was inadequate.<sup>8/</sup> Indeed, none of the Petitioners details the efforts -- if any -- they took after October 1996 to begin to implement the coding digit requirement. Given that the LEC ANI Coalition claims this problem affects up to 40 percent of the payphones nationwide,<sup>9/</sup> one would have expected the LECs to identify and address this problem much earlier than they did. As a result, Petitioners' last minute attempts to escape their obligations should be denied.

It is more than just the inexcusable procedural delay that compels denial of the waiver petitions. The Petitioners' proposed remedies belie a claim that the one-year transition was inadequate. The longest waiver sought by Petitioners is nine months (sought by USTA) from the date of the order to implementation. If the LECs could begin the process now and complete it in nine months (or less), there is no reason they could not have

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<sup>7/</sup> See 47 C.F.R. § 1.3 (waiver may be granted "for good cause shown").

<sup>8/</sup> See *Federation of American Health Systems*, 9 FCC Rcd 3303 (1994) (waiver denied where Commission adopted transition "to ease the impact of compliance" and petitioner had not demonstrated that the transition period was inadequate).

<sup>9/</sup> Letter from Michael K. Kellogg, Counsel, LEC ANI Coalition, to John B. Muleta, Acting Deputy Chief, Common Carrier Bureau at 2 (Sept. 30, 1997).

started the process last October. If they had done that, they could have been in compliance with the Commission's order, and a waiver would not be necessary.

Therefore, it is CompTel's position that any waiver is unjustified, and that the Bureau's *Waiver Order* should be rescinded. CompTel recognizes that many independent PSP phones do not transmit coding digits, through no apparent fault of their own. Those LECs that failed to comply with the coding digit requirement should be held responsible for the consequences of that failure.

In remedying any inequities to independent PSPs, the Commission should not punish compensating carriers, who, like the independent PSPs, did not have control over whether unique coding digits were supplied in compliance with the Commission's deadline. Transferring the inequity from independent PSPs to carrier-payors does not serve any legitimate public interest. Therefore, if the Commission grants an extension of the deadline for providing coding digits, it must condition such an extension on a requirement that the *LEC* benefiting from the extension provide compensation to those payphones that do not transmit unique coding digits. For the duration of any such extension, the affected payphones should not be eligible for per-call compensation from carrier-payors but should be compensated on a per-phone basis by the serving LEC. This approach not only takes into

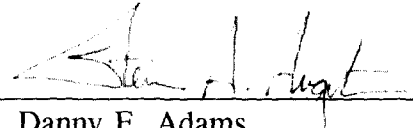
account the LECs' inexcusable delay in providing payphone coding digits, but also creates an incentive for the LEC to provide such coding digits as expeditiously as possible.

Respectfully submitted,

**THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION**

Genevieve Morelli  
Executive Vice President  
and General Counsel  
THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
202-296-6650

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By:   
Danny E. Adams  
Steven A. Augustino  
KELLEY DRYE & WARREN LLP  
1200 Nineteenth Street, N.W.  
Suite 500  
Washington, D.C. 20036  
202-955-9600

Its Attorneys